IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3190 of 1996

HAKAM SINGH
V/S
B.O.R. & ORS

Mr. NARENDRA SHRIMALI & Mr. MANJUL SHRIMALI, for the appellant / petitioner

Mr. HS SIDHU, for the respondent

Date of Order : 10.12.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This writ petition has been filed against the order of the Board of Revenue dated 8.5.96 (Annex.12), whereby the learned Board of Revenue declined to interfere with the order of the learned Revenue Appellate Authority dated 4.10.95 (Annex.11).

To recapitulate very briefly, the matter is, that an allotment of land was made in favour of the present petitioner on 18.7.92, vide Anex.1, reciting that the land is in temporary cultivation lease of the allottee, without mentioning the period during which it was presumed to be under his temporary cultivation. It appears from perusal of Annex.1 that it is a performa, wherein simply blanks have been filled in, and the portion intended to describe the period during which the allottee was under temporary

cultivation lease holder, is left blank. Be that as it may. Immediately after passing of this order, the private respondent approached the Revenue Appellate Authority on 18.9.92 itself, by moving an application praying that he is person affected by the impugned order, as the land which is allotted, is under his temporary cultivation lease, and he is entitled to have the land allotted, and therefore requested to be granted leave to file the appeal, as he was not party in the original proceedings. Alongwith the application, the private respondent also filed an application under Section 5 of the Limitation Act. Both these applications were opposed by the present petitioner. However, the learned Revenue Appellate Authority by passing two separate orders, on the same day, allowed both the applications. The petitioner in this writ has filed copy of only one order being Annex.11 whereby the application under section 5 Limitation Act was allowed. The copy of the other order has not been filed. The application was allowed on the ground that even if it is assumed that he came to know of the order on 6.9.92, still the application filed on 18.9.92 cannot be said to be time barred and thus, the appeal cannot be dismissed at this stage.

The petitioner filed one revision against both the above orders. Objection was raised about maintainability of one revision against two orders, however the Board heard

the matter on merits. From perusal of the order of the Board, it appears that by the other order the Revenue Appellate Authority held, that even though he was not a party in the allotment proceedings, since he is affected person, he is entitled to file appeal, and the application for grant of leave to appeal was also allowed.

The learned Board of Revenue found, that the Revenue Appellate Authority rightly found the appeal to be within time, and it cannot be said, that any error was committed in exercise of its discretion, whether in treating the appeal to be within time, or in granting leave to the present private respondent to file appeal, as he was effected person. It was found, that it depends on examination of the matter on merits, which is required to be decided, on the basis of evidence of both the parties, as to which of the rival claimants is entitled to have the land allotted. In such circumstances, the learned Revenue Appellate Authority has rightly found the appellant before it to be entitled to file appeal, and thus, declined to interfere with the order of the learned Revenue Appellate Authority.

Assailing the impugned order, much stress was laid on Annex.14, being the order of the learned Revenue Appellate Authority, passed on the stay application, on 21.9.92 dismissing the stay application, holding, that the

appellant has not produced any document to substantiate his being temporary cultivation lease holder since Samvat 2048, or as to in what capacity he was in possession, and therefore, even if he is in possession, he can be said to be in possession only as trespasser. According to learned counsel, that being the position, since the petitioner is temporary cultivation lease holder since Samvat 2025, the order of the learned Revenue Appellate Authority is bad.

I have considered the submission.

It is a different story, that the order Annex.14 is only an interlocutory order, and does not have the effect of adjudicating the rights of the parties, which were yet to be considered and adjudicated, while considering the application filed by the present private respondent, for being granted leave to appeal, on its own merits. Likewise, the application under Section 5 of the Limitation Act filed by the present private respondent was also still pending before the Revenue Appellate Authority, to be decided on its own merits. Over and above all this, even a reading of Annex.14 does not show, that the learned Revenue Appellate Authority has not found the private respondent in possession of the land. Whatever be the capacity in which the private respondent may be occupying the land, that was a question, which was, and is, yet to be gone into, on merits, while deciding the appeal. Since the

private respondent claims to be in actual possession of the land, even at the time of allotment, rather since much before, and on the other hand, the present petitioner also claims to be a temporary cultivation lease holder since Samvat 2025. In such circumstances, there is obviously a moot question to be decided, as to which of the rival claimants can be said to be legitimately entitled to have the permanent allotment. In such circumstances, in my view, it cannot be said, that the learned Revenue Appellate Authority was in error in granting leave, to the present private respondent, to file appeal, against the allotment order.

So far question of limitation is concerned, in my view, looking to the totality of circumstances, including the fact, that Ranjeet Singh has approached the Revenue Appellate Authority immediately on coming to know of the allotment order, it cannot be said, that the Revenue Appellate Authority committed such an error, which may require interference in my writ jurisdiction.

The conclusion of the aforesaid discussion is, that the writ is devoid of any merit, and is dismissed. Since the proceedings before the Revenue Appellate Authority have already remained stayed by this Court, for all this long period of time, the learned Revenue Appellate Authority is directed to decide the appeal, now most

expeditiously, on merits, after hearing both the parties, and in accordance with law.

(N P GUPTA),J.

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